

NR 445 Listing process and studies

(2)(a) The department, in consultation with the department of health and family services, shall monitor changes in the classifications of hazardous air contaminants as reported by the American Conference of Governmental Industrial Hygienists, the United States Environmental Protection Agency, the International Agency for Research on Cancer, and the National Toxicology Program.

(b) Beginning [2 years after effective date of rule] and every two years thereafter, the department shall develop a list of the changes in classifications and identify hazardous air contaminants that meet or no longer meet the presumptions in sub. (3).

(c) The department shall prepare rule modifications, as necessary, to revise the listing of substances in this chapter to include additional substances, to reflect a change in the classification of a substance, or to remove a substance from the list.

(3) The department shall presume that any hazardous air contaminant which meets one or more of the following criteria is a hazardous air contaminant which should be listed in Table A, B or C.

(a) The substance is included on a list of known or suspected carcinogens by both the international agency for research on cancer and the national toxicology program.

(b) The substance has a threshold limit value established by the American conference of governmental industrial hygienists.

(c) The substance has a reference concentration established by the United States environmental protection agency with an uncertainty factor of 300 or less.

(4) The presumption under sub.(3) may be overcome for adding or removing contaminants to or from Tables A, B or C if the greater weight of evidence demonstrates the presumption is incorrect.

(5) The department shall consider not listing a hazardous air contaminant in Table A, B or C if one of more of the following criteria are met:

(a). The only critical effect listed by the American conference of governmental industrial hygienists is asphyxiation.

(b) The substance possesses an explosive nature requiring safety procedures that preclude ambient concentrations that would present toxicity concerns.

(c) The threshold limit value is greater than 99 parts per million.

(d) The threshold limit value is equal to or greater than 10 milligrams per cubic meter.

(e) The department determines that the primary risk that gives rise to the classification of the substance as a hazardous air contaminant is not inhalation exposure.

(f) The department determines that other regulations control emissions of the hazardous air contaminant to no more than is allowed under subs. NR 445.04(1), (2) or (3) for the same duration of time.

(g) The department determines under s. NR 445.09 that an alternative strategy to that listed in this chapter is warranted.

NR 445.09 Hazardous air contaminant studies. (1) The Department may conduct studies in cases where it determines that substances presumed to be listed in this chapter under sub. NR 445.08(3) present unique complexities that may warrant alternative approaches to those listed in this chapter. The studies may recommend that the substance not be listed in this chapter, that emissions be exempted under s. NR 445.05 or that sources of the emissions meet alternative compliance requirements to those listed in this chapter.

Note: Unique complexities may be the result of the nature of the emissions, the sources of emissions, the management of emissions or other factors. The studies will not include a re-evaluation of the classification of the substance as reported by the American Conference of Governmental Industrial Hygienists, the United States Environmental Protection Agency, the International Agency for Research on Cancer, or the National Toxicology Program.

(2) The department staff shall, in consultation with affected industry, public health officials and other interested parties, undertake two separate studies of the emissions of [type] silica and wood dust. The studies shall evaluate the nature of the emissions, the sources and amounts of emissions and alternative strategies for managing the emissions. The department staff shall report progress on the studies to the natural resources board by [24 months after effective date of the rule].